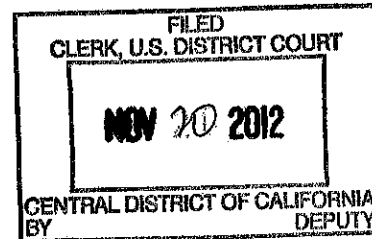


COPY

1 Tammy Hussin (Bar No. 155290)
2 Lemberg & Associates LLC
3 6404 Merlin Drive
4 Carlsbad, CA 92011
5 Telephone (855) 301-2100 ext. 5514
6 thussin@lemberglaw.com



6 Lemberg & Associates, LLC
7 1100 Summer Street
8 Stamford, CT 06905
9 Telephone: (203) 653-2250
10 Facsimile: (203) 653-3424

11 Attorneys for Plaintiff, Darin Stoytchev

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 **CV12-09927** SH

16 Darin Stoytchev,

Case No.:

17 Plaintiff,

COMPLAINT FOR DAMAGES

18 vs.

JURY TRIAL DEMANDED

19
20 T-Mobile USA, Inc.; and DOES 1-10,
21 inclusive,

22 Defendants.
23
24
25
26
27
28

1 For this Complaint, the Plaintiff, Darin Stoytchev, by undersigned counsel,
2 states as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Telephone
6 Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").
7

8 2. This Court has original jurisdiction over Plaintiff's TCPA claims. *Mims v.*
9 *Arrow Fin. Serv., LLC*, 132 S.Ct. 740 (2012).
10

11 3. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

12 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
13 Defendants transact business here and a substantial portion of the acts giving rise to
14 this action occurred here.
15

16 **PARTIES**

17 5. The Plaintiff, Darin Stoytchev (hereafter "Plaintiff"), is an adult
18 individual residing in Santa Monica, California.
19

20 6. The Defendant, T-Mobile USA, Inc., (hereafter "T-Mobile" or
21 "Defendants"), is a corporation with a principal place of business at 12920 Se 38th
22 Street, Bellevue, Washington 98006.
23

24 7. Does 1-10 (the "Agents") are individual agents and/or employees
25 employed by Defendants and whose identities are currently unknown to the Plaintiff.
26
27
28

1 One or more of the Agents may be joined as parties once their identities are disclosed
2 through discovery.
3

4 8. Defendants at all times acted by and through one or more of their Agents.

5 9. In or around August, 2012, Defendants began calling Plaintiff's cellular
6 phone 2 to 3 times on a daily basis in an attempt to reach the person named "Rodney."
7

8 10. Defendants contacted Plaintiff's cellular telephone number, 310-663-
9 0318, using an automated telephone dialer system with an artificial or prerecorded
10 voice (hereafter "Robocalls").
11

12 11. Plaintiff has no prior business relationship with Defendants and never
13 provided Defendants with his telephone number or contact information.
14

15 12. Plaintiff never requested to Defendants either by agreement or otherwise
16 that he be contacted.

17 13. On several occasions, Plaintiff returned the calls to T-Mobile and
18 informed T-Mobile that he did not know Rodney and that Rodney could not be reached
19 at Plaintiff's phone number, and further instructed T-Mobile to remove his telephone
20 number and cease all communications with him.
21

22 14. Despite Plaintiff's repeated requests to T-Mobile cease all calls to
23 Plaintiff, T-Mobile continued to place Robocalls to Plaintiff's cellular telephone.
24

25 15. When Plaintiff did not answer the calls, Defendants left automated
26 prerecorded messages on Plaintiff's voicemail.
27
28

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

16. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

17. Without prior express consent the Defendants contacted the Plaintiff by means of automatic telephone calls or prerecorded messages at a cellular telephone or pager in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

18. The foregoing acts and omissions of the Defendants constitute a violation of the Telephone Consumer Protection Act.

19. The Plaintiff is entitled to damages as a result of the Defendants' violations.

COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 et seq.

20. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

21. Plaintiff is informed and believes and thereon alleges that the purpose of T-Mobile's calls to Plaintiff were in an attempt to collect a consumer debt.

22. The Rosenthal Fair Debt Collection Practices Act, California Civil Code section 1788, *et seq.* ("Rosenthal Act") prohibits unfair and deceptive acts and practices in the collection of consumer debts.

1 23. T-Mobile USA, Inc., in the regular course of business, engages in debt
2 collection and is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

3
4 24. The Defendants caused a telephone to ring repeatedly and engaged the
5 Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation
6 of Cal. Civ. Code § 1788.11(d).

7
8 25. The Defendants communicated with the Plaintiff with such frequency as
9 to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).

10 26. The Defendants failed to comply with the provisions of 15 U.S.C. § 1692,
11 et seq., in violation of Cal. Civ. Code § 1788.13(e).

12
13 27. The Defendants did not comply with the provisions of Title 15, Section
14 1692d(5) of the United States Code, in violation of Cal. Civ. Code § 1788.17.

15
16 28. The Plaintiff is entitled to damages as a result of the Defendants’
17 violations.

18
19
20 **COUNT III**
21 **INVASION OF PRIVACY BY INTRUSION UPON SECLUSION**

22 29. The Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 30. The Restatement of Torts, Second, § 652B defines intrusion upon
25 seclusion as, “One who intentionally intrudes...upon the solitude or seclusion of
26 another, or his private affairs or concerns, is subject to liability to the other for invasion
27 of privacy, if the intrusion would be highly offensive to a reasonable person.”
28

1 B. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

2 C. Statutory damages of \$1,000.00 for knowingly and willfully committing
3 violations pursuant to Cal. Civ. Code § 1788.30(b); and
4

5 D. Attorneys fees and costs pursuant to Cal. Civ. Code § 1788.30(c).

6 E. Such other and further relief as may be just and proper.
7

8 **TRIAL BY JURY DEMANDED ON ALL COUNTS**
9

10
11 DATED: November 14, 2012

TAMMY HUSSIN

12
13 

14 By: _____
15 Tammy Hussin, Esq.
16 Lemberg & Associates, LLC
17 Attorney for Plaintiff, Darin Stoytchev
18
19
20
21
22
23
24
25
26
27
28

Tammy Hussin
 Lemberg & Associates, LLC
 6404 Merlin Drive
 Carlsbad, California 92011
 Telephone: (855) 301-2100 Ext. 5514
 Facsimile: (203) 653-3424

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Darin Stoytchev

PLAINTIFF(S)

v.

T-Mobile USA, Inc.; and DOES 1-10, inclusive,

DEFENDANT(S).

CASE NUMBER

CV12-09927

SA

SUMMONS

TO: DEFENDANT(S): T-Mobile USA, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Tammy Hussin, of counsel Lemberg & Associates, whose address is 6404 Merlin Drive, Carlsbad, CA 92011. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

NOV 20 2012

Dated: _____

Clerk, U.S. District Court

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].